



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

FEB 27 2009

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A

Individual A

IRA A

IRA B

Amount A

Account A

Account B

Dear:

This letter is in response to a request for a letter ruling dated November 3, 2007, from your authorized representative, in which you (Taxpayer A) request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A is currently age 68. The ruling request asserts Taxpayer A is suffering from a medical condition which impairs her ability to manage her financial affairs and which prevented her from accomplishing the timely rollover of Amount A as required by section 408(d)(3) of the Code.

On September 8, 2006, Taxpayer A withdrew Amount A from IRA A and deposited it into Account A on September 12, 2006. During the preparation of Taxpayer A's 2006

income tax return, Individual A, who holds a Durable Power of Attorney on behalf of Taxpayer A, discovered the liquidation of IRA A. On May 25, 2007, Amount A was removed from Account A by Individual A and deposited into Account B to prevent Taxpayer A from having access to Amount A. On September 24, 2007, Individual A deposited Amount A into IRA B for the benefit of Taxpayer A. Medical documentation received in connection with the request confirms Taxpayer A's condition.

Based on the above facts and representations, you request that due to Taxpayer A's medical condition, the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual

subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted on behalf of Taxpayer A is consistent with the assertion that the failure to accomplish a timely rollover was caused by Taxpayer A's medical condition.


Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA A. The contribution to IRA B of Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. Any amount in excess of Amount A contributed to IRA B along with Amount A will be considered an excess contribution and subject to the treatment provided in section 4973 dealing with tax on excess contributions.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or Income Tax Regulations thereunder that may be applicable.

This letter is directed only to Taxpayer A who is named above. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact  
SE:T:EP:RA:T1, (Badge No. \_\_\_\_\_) at \_\_\_\_\_. Please address all  
correspondence to SE:T:EP:RA:T1.

Sincerely yours,

  
Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437

cc: